DEVELOPMENTS

Review Essay – Procedural Laws in Europe. Towards Harmonisation (Marcel Storme ed. 2003)

Procedural Laws in Europe. Towards Harmonisation (Marcel Storme ed. 2003), Maklu Publishers, Antwerpen/Apeldoorn 2003, 472 p., ISBN 90 6215 881 1, 85,– EUR

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A. Introduction

The ongoing Europeanization of substantive private law is highly visible. Since the 1980s, numerous European Community (EC) Directives have greatly influenced the Member States' laws of obligations.[1] Currently, the European Commission is even considering a major step towards unification: the drafting of optional European Union (EU)-wide contract law rules.[2] Also, for quite some time now, several privately organized groups of legal scholars have contemplated the reasons for and the means to harmonize or unify private law in Europe.[3]

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[1] For a compilation of the most important Directives (in German, English and French) see EUROPÄISCHES SCHULDRECHT / EUROPEAN LAW OF OBLIGATIONS (ULRICH MAGNUS ED., 2002). A very important recent example is the EC Directive 99/44 of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, O.J. L 171/12. This Directive led to a major reform of German contract law ("*Schuldrechtsmodernisierung*"), see Peter Rott, 5 GERMAN LAW JOURNAL No. 3 (1 March 2004), available at http://www.germanlawjournal.com/article.php?id=386.

[2] For the debate about Communication from the Commission to the European Parliament and the Council, A more coherent European contract law: an action plan COM (2003) 68 final, 12 February 2003, see Dirk Staudenmayer, *Der Aktionsplan der EG-Kommission zum Europäischen Vertragsrecht*, 14 EUROPÄISCHE ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT 165 (2003); Staudenmayer, *Ein optionelles Instrument im Europäischen Vertragsrecht?*, 4 ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 828 (2003); Gralf-Peter Calliess, 4 GERMAN LAW JOURNAL No. 4 (1 April 2003), available at http://www.germanlawjournal.com/article.php?id=265; and Jürgen Basedow, *Ein optionales Europäisches Vertragsgesetz - opt-in, opt-out, wozu überhaupt?*, 1 ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 1 (2004).

[3] *E.g.*, the Commission on European Contract Law (the so-called Lando Commission) was already established in 1980. The Lando Commission has devised Principles of European Contract Law, see PRINCIPLES OF EUROPEAN CONTRACT LAW, PARTS I AND II, (OLE LANDO/HUGH BEALE EDS., 2000); PRINCIPLES OF EUROPEAN CONTRACT LAW, PART III (OLE LANDO/ERIC CLIVE/ANDRE PRÜM/REINHARD ZIMMERMANN EDS. , 2003). Wolfgang Wurmnest, *Common Core, Grundregeln, Kodifikationsentwürfe, Acquis-*

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By contrast, efforts aimed at harmonizing the Member States' procedural laws have, until recently, lagged behind. Even though the necessities of international litigation led the Member States to adopt various conventions addressing certain problems of international private law[4] and international procedural law (most notably the Brussels Convention[5]), none of these measures had a significant influence on core areas of the respective national procedures.[6] However, some harmonizing effect can be attributed to the preliminary rulings of the European Court of Justice (ECJ).[7] The ECJ occasionally even practically invalidated national provisions infringing upon the freedoms of the internal market[8] or violating the general prohibition against discrimination on grounds of nationality (now Art. 12 EC).[9]

In 1990, the European Commission requested a group of experts (chaired by Professor Marcel Storme) to draft a European model code of civil procedure. The

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Grundsätze - Ansätze internationaler Wirtschaftlergruppen zur Privatrechtsvereinheitlichung in Europa, 4 ZEITSCHRIFT FÜR EUROPÄISCHES PRIVATRECHT 714 (2003) provides an extensive survey of other important scholarly efforts.

[4] Convention on the Law Applicable to Contractual Obligations, 19 June 1980, (Rome Convention).

[5] Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 27 September 1968. The Convention is now replaced by the Brussels I Regulation, see *infra*, note 17. In the area of judicial assistance, most Member States are party to the Hague Convention Relating to Civil Procedure, 1 March 1954 (dealing, *inter alia*, with security for costs and with proceedings in *forma pauperis*), to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 15 November 1965, and to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 18 March 1970.

[6] Cf. Konstantinos D. Kerameus, *Angleichung des Zivilprozeßrechts in Europa, Einige grundlegende Aspekte*, 66 RABELS ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT 1, 2 (2002); Andreas Schwartze, *Enforcement of Private Law: The Missing Link in the Process of European Harmonisation*, 8 EUROPEAN REVIEW OF PRIVATE LAW 135, 142 (2000).

[7] In 1971, the signatory states conferred on the ECJ jurisdiction to interpret the Brussels Convention via preliminary rulings. These rulings have a harmonizing effect, because the ECJ interprets the provisions of the Convention autonomously, see Burkhard Heß, NEUE JURISTISCHE WOCHENSCHRIFT 23, 24 (2000); Konstantinos D. Kerameus, *Angleichung des Zivilprozeßrechts in Europa, Einige grundlegende Aspekte*, 66 RABELS ZEITSCHRIFT FÜR AUSLÄNDISCHES UND INTERNATIONALES PRIVATRECHT 1, 12 (2002); cf. also Rolf Stürner, *Der deutsche Prozeßrechtslehrer am Ende des 20. Jahrhunderts*, in FESTSCHRIFT FÜR GERHARD LÜKE 829, 835 (H. PRÜTTING ED., 1997).

[8] Case C-20/92, *Hubbard v. Hamburger*, 1993 ECR I-3777, § 110 para. 1 German Code of Civil Procedure.

[9] Case C-398/92, *Mund & Fester v. Hatrex*, 1994 ECR I-467 with comment by Schlosser, *Zeitschrift für Europäisches Privatrecht* 253 (1995): permission to attach a debtor's assets (*dinglicher Arrest*) solely on the ground that a subsequent judgment will have to be enforced abroad, § 917 para. 2 German Code of Civil Procedure.

purposefully fragmentary result – covering 16 select topics which were found to be amenable to harmonization – was presented to the European Commission in 1993.[10] In Germany, the proposals drew heavy criticism from procedural scholars.[11] Some questioned the need for or the desirability of unified national procedural rules in the EU.[12] Also, the project was perceived as having been undertaken without sufficient comparative preparatory work.[13] Although the European Commission did not pursue the matter further, it can nevertheless be said that the efforts of the Storme working group provided the starting point for an intensive debate about the scope and the means of harmonizing the national procedural rules.

In October 1997, the Treaty of Amsterdam introduced drastic changes.[14] The Community was given the task of progressively establishing an area of freedom, security and justice (Art. 61 EC).[15] The new Arts. 61, 65 EC empower the Council to adopt measures in the field of judicial cooperation in civil matters having cross-border implications in so far as they are necessary for the proper functioning of the internal market. These measures are not limited to the traditional areas of international civil procedure like jurisdiction, recognition and enforcement or judicial assistance. Art. 65(c) EC explicitly allows for the elimination of obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States. Furthermore, the political leaders of the Member States have made it clear that they view the development of the envisaged European area of freedom, security and justice to be a top priority.[16] As a result, the Community has already passed a large

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[10] RAPPROCHEMENT DU DROIT JUDICIAIRE DE L'UNION EUROPÉENNE – APPROXIMATION OF JUDICIARY LAW IN THE EUROPEAN UNION 39 (MARCEL STORME ED., 1994). For a presentation of the project see also KONSTANTINOS D. Kerameus, *Procedural Harminization in Europe* 43 AMERICAN JOURNAL OF COMPARATIVE LAW 401, 410 (1995).

[11] Günter H. Roth, 109 *Zeitschrift für Zivilprozeß* 271, 308 (1996); Eberhard Schilken, 109 *Zeitschrift für Zivilprozeß* 315, 330 (1996) concerning enforcement.

[12] See especially Rolf Stürner, *Das Europäische Zivilprozeßrecht – Einheit oder Vielfalt?*, in WEGE ZU EINEM EUROPÄISCHEN ZIVILPROZEßRECHT 1, 9 (WOLFGANG GRUNSKY ED., 1992); *id*. at 17: irrational urge towards uniformity.

[13] Roth, *supra*, note 11 at 313.

[14] The Treaty of Amsterdam came into force on 1 May 1999.

[15] See the latest update of the European Commission's scoreboard to review progress on the creation of an "area of freedom, security and justice" in the European Union, COM (2003) 812 final, 30 December 2003 at 40. The Commission has set up a website as well at http://europa.eu.int/comm/justice_home/index_en.htm.

[16] See the introduction to the Presidency Conclusions of the European Council meeting at Tampere in October 1999, Bull. EU 10-99: "The European Council is determined to develop the Union as an area of

number of acts with remarkable speed, most of them in the form of Regulations.[17] The Commission and the Council are currently pursuing a strategy of sectoral harmonization, or even unification, of all aspects of procedural law concerning cross-border litigation between the Member States.[18] It is therefore no exaggeration to speak of a rapidly emerging law of European or internal market civil procedure that is settled between the national and the international procedural laws.[19] Also, even though there are no plans to approximate or unify the Member States' procedural laws outside the area of international litigation, the national laws will nonetheless be affected by some of the European Commission's projects.[20]

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freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. … The European Council will place and maintain this objective at the very top of the political agenda." See also the Council's draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, OJ C 12/1 of 15 January 2001.

[17] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, O.J. 2001 L 12/1 (Brussels I), replacing the Brussels Convention; Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, O.J. 2000 L 160/19 (Brussels II), soon (in March 2005) to be replaced by Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, O.J. 2003 L 338/1 (Brussels IIa); Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, O.J. 2000 L 160/1; Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters, O.J. 2000 L 160/37; Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, O.J. 2001 L 174/1; see also the Council Directive No 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, O.J. 2003 L 26/41, and the Council Decision of 28 May 2001, 2001/470/EC, establishing a European Judicial Network in civil and commercial matters, O.J. 2001 L 174/25. Also, several other Community acts include procedural rules to further certain substantive issues, see, *e.g.*, the Directive 1998/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, O.J. 1998 L 166/51. These acts are primarily based on Art. 95 EC (establishment and functioning of the internal market).

[18] See European Commission, Area of Freedom, Security and Justice, Assessment of the Tampere Programme and Future Orientations, COM (04) 4002 final, 2 June 2004 at 11; the Commission's scoreboard, *supra*, note 15, at 39; RICHARD WAGNER, NEUE JURISTISCHE WOCHENSCHRIFT 2344, 2346 (2003); Burkhard Heß, *Aktuelle Perspektiven der europaeischen Prozessrechtsangleichung*, 11 JURISTENZEITUNG 573, 578 (2001).

[19] Cf. Burkhard Heß, *Die Integrationsfunktion des Europäischen Zivilverfahrensrechts*, PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS 389, 390 (2001); Astrid Stadler, *Das Europäische Zivilprozessrecht – Wie viel Beschleunigung verträgt Europa? – Kritisches zur Verordnung über den Europäischen Vollstreckungstitel und ihrer Grundidee*, 1 PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS 2, 3 (2004).

[20] See, *e.g.*, the new Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, O.J. 2004 L 143/15. In order to facilitate cross-border enforcement, certain types of judgments will be recognized and enforced in

Against this background, Professor Marcel Storme organized a colloquium on "The Coming Together of Procedural Laws in Europe" in Brussels on October 26-27, 2001, which stood under the auspices of the European Commission and the Belgian Ministry of Justice. The participants, who came from all of the old and most of the new Member States, ventured to take a look at the possible future of European-style litigation. The book that contains the proceedings is structured along the three great questions of harmonization: Why?, What? and How? The 24 contributions are mostly in English (10) or German (8). There are some French (3) and some Dutch (3) articles as well. Due to the large number of contributions, only some of them can be presented in this review.

B. Harmonization: Why?

Torbjörn Andersson presents a model to roughly evaluate the present level of approximation in a certain area of law by using the dichotomy of European approximation and Member State discretion. He points out that the model is only thought to be understood as a means of understanding the levels of approximation, and that it would be impossible to conclusively assess a level. The approximation level of civil procedure is described to be between "low" and "rather low". This description means that the Member States have very large or at least considerable discretion in this area of law. The dynamics, however, would work solely in the direction of further approximation. The purpose of approximation is dealt with rather briefly. Andersson doubts whether the scope of any analysis is wide enough to discuss the connection between general objectives and approximation in a meaningful way. But, because court procedure determines the practical results of substantive law reforms, and variations in procedure impair the uniform treatment in substance between the citizens of the Member States, he states that the European political ambition to integrate substantive law and political policy in various fields has created a practical need for the approximation of civil procedure.

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every Member State without the need for exequatur as of October 2005 (cf. the current recognition procedure, Art. 38 Brussels I Regulation). The proceedings in the country of origin, in turn, will have to adhere to certain minimum standards, especially with regard to the service of documents, Arts. 13-15. The European Enforcement Order is the first step to extend the principle of mutual recognition, originally relating to the free movement of goods, to the area of civil procedure, cf. the Tampere Presidency Conclusions, *supra*, note 6, paras. 33,34, 37. See the critical remarks by Stadler, *Id*.,

5; cf. also, Heß, *Id*., 391. In response to persistent criticism, the original Commission proposal was later amended to enhance protection of debtors, especially consumers, see Andreas Stein, *Der Europäische Vollstreckungstitel für unbestrittene Forderungen tritt in Kraft – Aufruf zu einer nüchternen Betrachtung*, 3 PRAXIS DES INTERNATIONALEN PRIVAT- UND VERFAHRENSRECHTS 181, 189 (2004).

The article by Gerhard Walter deals with the current process of unifying procedural law in Switzerland through a new federal code of civil procedure that replaces the 26 cantonal codes and the existing federal code.[21] He points out that the Swiss experience is particularly interesting for the approximation efforts of the EU because Switzerland, with its four official languages, is by no means a homogeneous country. The fact that the Swiss are nevertheless striving for a unified civil procedure – excluding only the organization of the judiciary – is explained by the uniformity of the economic area of Switzerland, the approximation of living conditions, the problem of ensuring a fair, equal and efficient enforcement of uniform substantive law, and the foregoing piecemeal approximation via federal laws. Walter goes on to present some lessons that can be learned by the European reformers from the Swiss experience. For instance, he points out the need for a well-balanced mixture of academics and practitioners when devising the new procedural rules.

C. Harmonization of what?

This section of the book contains articles dealing with the harmonization of certain areas from the "fringes" of civil procedure. Wendy Kennett discusses the particularly difficult harmonization of the enforcement of civil judgments. She addresses several of the obstacles to improving cross-border enforcement in the EU, among them the differences in the types of enforceable instruments. The highly differing regulations concerning enforcement agents are especially well-covered. Kennett distinguishes between jurisdictions where enforcement is entrusted solely to agents who specialize in that function (like the French *huissier de justice*) and other jurisdictions where control over enforcement is more diffuse, though the process is channelled to a greater or lesser extent through the courts (as is the case in Germany). Also, she points to the big differences in powers that Member States have conferred on enforcement agents in the search for information and assets. Critical points include the right to enter the debtor's premises and data privacy considerations. In conclusion, Kennett cautions that enforcement laws are deeply embedded in national histories and cultures, making them potentially resistant to change. Nevertheless, she argues that, in the light of the free movement of debtors and their assets, common targets should be set for the Member States' enforcement systems.

Rolf Stürner's general report on summary proceedings covers a wide range of procedural instruments aimed at expediting the protection and enforcement of

[21] For a presentation of the preliminary draft see Thomas Sutter-Somm, *Vereinheitlichung des Schweizerischen Zivilprozessrechts - Der Vorentwurf zur Schweizerischen Zivilprozessordnung im Überblick*, 7 ZEITSCHRIFT FÜR ZIVILPROZEß INTERNATIONAL 369 (2002).

substantive rights.[22] At first, Stürner turns to the common European constitutional and historical background of the matter. He posits that the provision of a minimum standard of summary proceedings is required by Art. 6(1) of the European Convention on Human Rights and by the constitutional traditions of the EU Member States. Also, he points out the common historical roots of summary proceedings across the EU. It is therefore not surprising that the following comparative evaluation yields more similarities than differences between the Member States' regulations. All Member States provide provisional measures as well as expedited proceedings to obtain a regular judgment. Stürner discusses significant national and regional peculiarities in detail. Finally, from these comparative observations, he draws conclusions as to whether harmonization is needed in a certain area and which solution should be preferred. Stürner recommends, *inter alia*, introducing uniform orders for payment on application by the creditor without special requirements. Also, he argues that EU-wide preliminary attachment of assets (rather than English-style freezing injunctions) should be granted by courts in all Member States when necessary for the protection of the execution of money judgments.

Neil Andrews presents a model for a uniform European protective order that would be recognized and enforced by courts across the EU. The envisaged order is of a drastic nature. The respondent is prevented from dissipating his assets, regardless of the jurisdiction in which they are located. He is also forced to disclose such assets. Furthermore, Andrews suggests an ancillary search order for the preservation of vital evidence. These orders can be granted *ex parte* and before the commencement of the main civil proceedings. Their effects are solely *in personam*, such that no proprietary or possessory interests in the respondent's assets are conferred. Also, informed non-parties (mostly banks) must refrain from acting inconsistently with the order. In his concluding remarks, Andrews concedes that his model is much influenced by the English freezing injunctions and civil search orders. He argues, however, that the (continental) solution proposed by Stürner in his general report, which gives the creditor real security over specified assets,[23] would interfere with the order of security rights in commercial dealings and confer unwarranted benefits on the applicant creditor. Unfortunately, further comparative observations are lacking.

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[22] For an English-language overview of German accelerated proceedings see G. Wagner, *The Purpose and Importance of Preliminary and Summary Procedures*, in PROZEßRECHT UND RECHTSKULTUREN – PROCEDURAL LAW AND LEGAL CULTURES 69 (PETER GILLES ED., 2004).

[23] *E.g.*, the German Arrest order and subsequent attachment of specified assets, §§ 916-934 German Code of Civil Procedure.

The article by Burkhard Heß deals with fast-track debt collection, *i.e.*, expedited procedures that enable a creditor to quickly obtain an enforceable title. On application of the creditor, the court orders the debtor *ex parte* to either dispute the claim or pay the sum of money fixed in the order. The creditor receives an enforceable title unless the debtor objects within a certain amount of time. Heß points out that regulations across the EU differ widely even though Member States are already required by European legislation to ensure the possibility of obtaining an enforceable title within a period of 90 days.[24] For instance, specific proceedings resulting in an order for payment are not available in all Member States. Also, while applicants are required to substantiate claims or even supply supporting documentary evidence in some jurisdictions, they are not required to do so in others. Heß therefore argues that a practical need exists for a uniform procedure to easily collect money debts. He goes on to examine the scope of the Community competences. He explains that Art. 95 EC allows only the setting of minimum standards, while Art. 65(c) EC requires cross-border implications, hence national proceedings are not covered. Heß also evaluates the order for payment procedure (Art. 11) of the Storme working group's model code of civil procedure.[25] While affirming the general viability of the proposed rules, he criticizes the need for the applicant to supply supporting documents. This obligation would make it impossible to streamline the procedure via electronic data processing.

Harald Koch discusses the prospects of harmonizing complex litigation in the European Union. He puts forward two reasons for pursuing harmonization: prevention of forum shopping and effective realization of certain important substantive Community policies like environmental and consumer protection, Art. 3(l) and (t) EC. Koch makes a basic distinction between suits brought by associations in the public interest, which are the prevailing type of suits in Continental Europe, and group actions in the interest of the group members. He goes on to point out that the availability of complex and collective procedures is generally desirable, because they increase the efficiency of the judicial system and serve as a means to effectively enforce substantive law. Potential for misuse –

[24] Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions, O.J. 2000 L 200/35, Art. 5: "Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, normally within 90 calendar days of the lodging of the creditor's action or application …, provided that the debt or aspects of the procedure are not disputed. …". Further Community action is foreseeable, see the European Commission's proposal for a Regulation of the European Parliament and of the Council creating a European order for payment procedure, COM (04) 173 final, 12 March 2004 – 2004/55 (COD); cf. also the Commission's Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation, COM (2002) 746 final, 20 December 2002.

[25] See RAPPROCHEMENT, *supra*, note 10 at 147, 207.

especially in the case of group actions – would have to be countered by judicial supervision of the proceedings. Finally, Koch proposes certain steps towards harmonization. The first step would be to supplement the existing EC Directive on injunctions for the protection of consumers' interests[26] by making infringements upon all legal norms of European origin actionable and by allowing associations and other collective interest representatives to sue for damages in addition to seeking injunctive relief.

D. Harmonization: How?

Peter Gilles presents ten theses on the process called Europeanization of procedural law.[27] At first, he points out the difficulty of the subject by noting that no theory of Europeanization exists and that the meaning of terms like harmonization or approximation remains unclear. He also criticizes a widespread tendency to address procedural details rather than fundamental issues of civil procedure. Instead, he advocates for an initial focus on fundamental procedural principles and common European constitutional requirements, in order to gain a general framework for procedural approximation or unification.[28] Furthermore, Gilles expresses strong reservations concerning the general feasibility of harmonizing or approximating the national laws. Unification, on the other hand, would enable a search for the best solution, rather than settling on a middle course perceived to be agreeable because it does not deviate too much from the Member States' current rules.

[26] Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, O.J. 1998 L 166/51.

[27] See also Peter Gilles, *Vereinheitlichung und Angleichung unterschiedlicher nationaler Rechte. Die Europäisierung des Zivilprozeßrechts als ein Beispiel*, 7 ZEITSCHRIFT FÜR ZIVILPROZEß INTERNATIONAL 3 (2002).

[28] Cf. the huge international joint project by the American Law Institute and Unidroit on transnational procedure: in the beginning, the participants only endeavored to devise detailed rules, but the scope was later extended to include principles as well. See The American Law Institute/UNIDROIT, Principles and Rules of Transnational Civil Procedure, Proposed Final Draft, 9 March 2004. A prior version is available at http://www.ali.org/ali/TransCP-CD2.pdf. For a detailed presentation of the project see the contributions to UNIFORM LAW REVIEW 739-1033 (HERBERT KRONKE, ED., 2001-4).

E. Conclusion

In sum, the book contains the views of some of Europe's leading proceduralists on the ongoing Europeanization of civil procedure. Their works demonstrate a willingness to participate in the creation of the European area of freedom, security and justice, rather than merely leaving everything up to the European Commission. This makes one hope that the process will lead to an overall improvement of civil procedure in Europe. In the end, civil procedure may be spared the Community legislation-induced chaos that has ensued in certain areas of private and public substantive law.[29]

[29] Cf. the Commission's action plan "A more coherent European contract law", *supra* note 2 at 8.

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